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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D., as an individual and in his representative capacity under Business & Professions Code § 17200 *et seq.*,

Plaintiffs,

VS.

RUSSELL D. STANTEN, M.D., et al.,

Defendants.

Case No. C 07-2486 WHA

**PLAINTIFF'S OBJECTIONS TO
DEFENDANTS' EVIDENCE IN
SUPPORT OF SPECIAL MOTION TO
STRIKE**

Date: August 16, 2007
Dept.: Ctrm. 9, 19th Floor
Time: 2:00 p.m..
Judge: Hon. William H. Alsup

Plaintiff Coyness L. Ennix, M.D. objects to the admission of the following portions of defendants' evidence in support of defendants' special motion to strike:

Declaration of Joanne Jellin:

Declaration Cites	Objections
Paragraph 3, lines 18-22	Inadmissible legal conclusion regarding the discoverability of peer review records; lack of foundation

Declaration of Steven Staten

Declaration Cites	Objections
Paragraph 3, lines 23-28	Inadmissible hearsay mischaracterizing a document.
Paragraph 4, lines 13-23	If submitted for the truth of the matters asserted, these statements are inadmissible hearsay and lack foundation.
Paragraph 5, line 4	Inadmissible speculation regarding Dr. Ennix's state of mind.
Paragraph 5, lines 9-13	If submitted for the truth of the matters asserted, these statements are inadmissible hearsay.
Paragraph 6, lines 15-18	If submitted for the truth of the matters asserted, these statements are inadmissible hearsay.
Paragraph 7, lines 2-4	If submitted for the truth of the matters asserted, these statements are inadmissible hearsay.
Paragraph 7, lines 9-14	If submitted for the truth of the matters asserted, these statements are inadmissible hearsay.
Paragraph 7, lines 17-21	If submitted for the truth of the matters asserted regarding what other persons thought, these statements are inadmissible hearsay, based on speculation and lack foundation.

1 Paragraph 11, 5:22-6:1	If submitted for the truth of the matters asserted regarding the quality of care provided, these statements are inadmissible hearsay and lack foundation.
2	If submitted for the truth of the matters asserted regarding what other persons thought, these statements are inadmissible hearsay, based on speculation and lack foundation.
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10 Paragraph 7, lines 9-14	If submitted for the truth of the matters asserted, these statements are inadmissible hearsay.
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Declaration of Russell Staten

Declaration Cites	Objections
15 Paragraph 7, 2:27-3:7	If submitted for the truth of the matters asserted, these statements are inadmissible hearsay.
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18 Paragraph 7, 3:7-11	Irrelevant; if submitted for the truth of the matters asserted, these statements are inadmissible hearsay; lack of foundation.
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21 Paragraph 8, 3:14-17	Based on speculation and inadmissible hearsay regarding the motivation of others; lack of foundation.
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24 Paragraph 8, 3:17-18	Inadmissible hearsay.
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26 Paragraph 8, 3:24-4:10	Irrelevant; inadmissible opinion testimony; based on speculation; lacks foundation.
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Declaration of Lamont Paxton

Declaration Cites	Objections
Paragraph 4, 1:27	Inadmissible conclusion that NMA is
	“reputable”; lack of foundation.
Paragraph 4, 1:26-2:2	If submitted for the truth of the matters
	asserted, these statements are inadmissible
	hearsay; speculation regarding the
	motivations of others.
Paragraph 6, lines 17-21	If submitted for the truth of the matters
	asserted, these statements are inadmissible
	hearsay; lack foundation.
Exhibit A	If submitted for the truth of the matters
	asserted in these documents, the statements
	in the documents are inadmissible hearsay.
Paragraph 11 (entire paragraph)	If submitted for the truth of the matters
	asserted, these statements are inadmissible
	hearsay; speculation regarding the
	motivations of others.

Declaration of William Isenberg

Declaration Cites	Objections
Paragraph 6, lines 13-21	As to the conduct of persons other than Dr. Isenberg, these statements lack foundation and are based on speculation regarding the motivations of others.
Paragraph 7, lines 5-7	Irrelevant; as to the conduct of persons other than Dr. Isenberg, these statements

1		lack foundation and are based on
2		speculation regarding the motivations of
3		others.
4	Paragraph 8, 5:8-9	Irrelevant.
5	Paragraph 8, 5:12-15	Irrelevant.
6	Paragraph 8, 5:21-25	Irrelevant and inadmissible conclusions
7		about the falsity of allegations.
8	Paragraph 8, 5:26-6:4	Inadmissible hearsay; statements lack
9		foundation and are based on speculation
10		regarding the motivations of others.
11	Exhibit D	If submitted for the truth of the matters
12		asserted in these documents, the statements
13		in the documents are inadmissible hearsay.
14	Paragraph 9, 6:12	Inadmissible conclusion regarding “poor
15		result”; no foundation that any of the four
16		cases involved “poor results.”
17	Paragraph 9, 6:15-17	If submitted for the truth of the matters
18		asserted, these statements are inadmissible
19		hearsay.
20	Paragraph 9, 6:21-7:6 and Exhibit E	If submitted for the truth of the matters
21		asserted in these documents, the statements
22		in the documents are inadmissible hearsay.
23		Dr. Isenberg’s conclusions are inadmissible
24		expert opinion testimony and lack any
25		foundation about whether the numbers he
26		cites reflect adjustment for risk factors in
27		patients.
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1	Paragraph 10, lines 7-12	Inadmissible hearsay; statements lack foundation and are based on speculation regarding the motivations of others.
2	Paragraph 10, lines 15-18	Speculation regarding Dr. Ennix's motivation or state of mind.
3	Paragraph 10, lines 22-23	Inadmissible hearsay; lack of foundation.
4	Paragraph 11, 8:7-12	No foundation for statements about NMA's experience; statement regarding Dr. Milstein are irrelevant given that no evidence exists that he had any involvement whatsoever in reviewing Dr. Ennix.
5	Paragraph 11, 8:18-22	Irrelevant; lack of foundation.
6	Paragraph 12, 8:27-9:2, 9:23-26	If submitted for the truth of the matters asserted in the NMA documents, the statements in the documents are inadmissible hearsay.
7	Paragraph 12, 9:12-23	If submitted for the truth of the matters asserted, the statements are inadmissible hearsay.
8	Paragraph 13, 10:4-11	Inadmissible hearsay if submitted for the truth of the matters asserted; lack of foundation; fails to note that Dr. Ennix performed far more surgeries than his peers so it is not surprising that he would have more cases "fall out" for peer review; Dr. Isenberg again fails to state whether the
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1	numbers he cites reflect adjustment for risk	
2	factors in patients.	
3	Paragraph 13, 10:20-15	If submitted for the truth of the matters asserted, the statements are inadmissible hearsay; lack of foundation.
4	Exhibit K; Paragraph 14, 11:10-19	If submitted for the truth of the matters asserted in these documents, the statements in the documents are inadmissible hearsay.
5	Paragraph 15, 11:20-25	Speculation regarding Dr. Ennix's motivation or state of mind.
6	Paragraph 15, 12:15-19	Inadmissible legal conclusion regarding exhaustion of administrative remedies; lack of foundation.
7	Exhibit M; Paragraph 16, 12:22-28	If submitted for the truth of the matters asserted in these documents, the statements in the documents are inadmissible hearsay.
8	Paragraph 16, 12:28-13:4	If submitted for the truth of the matters asserted, the statements are inadmissible hearsay; lack of foundation.
9	Paragraph 17, 13:22-14:5; Exhibit P	Lack of foundation; inadmissible hearsay; if Exhibit P and the statements regarding Exhibit P are submitted for the truth of the matters asserted in Exhibit P, the statements are inadmissible hearsay.
10	Paragraph 18 (entire paragraph)	Irrelevant.
11	Exhibit Q	Inadmissible hearsay.

1 Paragraph 19, 14:23-15:10

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3 Irrelevant; inadmissible opinion testimony;
inadmissible hearsay; lack of foundation;
speculation.

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5 Dated: August 10, 2007

6 Respectfully Submitted,
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12 MOSCONE, EMBLIDGE & QUADRA, LLP

13 By: _____

14 G. Scott Embidge

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Attorneys for Plaintiff